

ILLEGAL TOBACCO TASK FORCE

Public Meeting #52 Minutes

Meeting Date: Wednesday, January 25, 2023

Meeting Time: 1:00 pm

Meeting Location: Via WebEx conferencing, dial (408) 418-9388, Meeting ID# 2331 241 4157

Board Attendance: John Hayes (DOR), Major Brian Connors (MSP), Patricia Henley (DPH), Dan Boyd on behalf of Susan Terrey (EOPSS), Nicholas Ogden (AGO), Dan O'Neil (TRE), and Nicole Nixon (AGO)

Public Attendance: 25 attendees

Call to Order:

- Mr. Hayes called the meeting to order at 1:03PM.
- Mr. Hayes informed all participants that this meeting will not be recorded by WebEx and that Cole Doherty-Crestin will take notes to complete the minutes. He reminded everyone to mute their phones and/or computers to limit background noise.

Opening Remarks:

- Mr. Hayes thanked everyone for attending. Mr. Hayes asked the board to introduce themselves.
- Mr. Hayes indicated today's meeting will primarily focus on a Preliminary Review and Discussion of Annual Report of Illegal Tobacco Task Force.

Approval of Minutes from Meeting #51 on September 28, 2022:

- Cole Doherty-Crestin emailed a copy of the minutes for Meeting #51 to Task Force members prior to this meeting. Mr. Hayes asked members if there were any recommended edits to be made and hearing none, he asked for a motion to approve. Nicole Nixon approved. Patricia Henley seconded the motion. Mr. Hayes stated that with no objection, the minutes were approved.

Preliminary Review and Discussion of Annual Report of Illegal Tobacco Task Force:

- Mr. Hayes provided a preliminary review of the Illegal Tobacco Task Force Annual Report. The report is to be submitted on March 1, 2023.
- Mr. Hayes reviewed the report's results and trends. Tobacco and ENDS Revenue declined approximately \$4.4 million. Cigarettes declined approximately \$7 million. Cigar & Smoking Tobacco declined approximately \$700,000. ENDS increased approximately \$3 million. Cigarette use among adults continued to decline this past year from 11.1% to 10.6%. In 2014, cigarette use among adults was 14.7%. Dan O'Neil inquired about the data source for cigarette use among adults. Patricia Henley confirmed these are Behavioral Risk Factor Surveillance System results for adult smoking rates in Massachusetts. Henley further explained the percentage decrease in smoking prevalence may not correspond with the percentage decrease in revenue due to current smokers smoking less but still identifying as a smoker. Henley agreed to provide more data on the use of various types of tobacco products.

- Mr. Hayes reviewed the report’s tobacco and ENDS seizure data. Beginning in November 2021, Task Force adopted uniform metrics to track tobacco seizures. Cigarette seizures increased by approximately 243%. Smokeless tobacco increased by approximately 867%. ENDS decreased by approximately 34.6%. Current trends show cross-border smuggling is the primary challenge for untaxed flavored ENDS, cigars, and menthol cigarettes. This involves MA licensees purchasing from unlicensed distributors both inside and outside the state as well as MA licensees traveling to other states to purchase products. A recent study by Tax Foundation identified MA as the state with the 9th highest rate of inbound smuggling. Patricia Henley mentioned there are other recent analyses she will forward for inclusion in the report.
- Mr. Hayes reviewed the report’s summary of Task Force activities and inspections. There are currently 6,372 tobacco retailers and 111 tobacco distributors. Mr. Hayes reviewed some DOR, LBOH, State Police and AGO highlights from the report.
 - *For DOR:* Compared to the prior year MEB inspections increased from 3,405 to 4,236; CIB inspections increased from 13 to 27; MEB seizures increased from 157 to 298; CIB seizures increased from 13 to 27; warning letters/suspensions/revocations increased from 56 to 577. Mr. Hayes provided an example of a successful CIB inspection that revealed an unlicensed distributor evaded approximately \$940,000 in ENDS, OTP, and cigarette excise taxes.
 - *For Local Boards of Health (LBOH):* Compared to the prior year, inspections increased from 4,935 to 6,290 and violations cited decreased slightly from 2,178 to 2,080. Mr. Hayes provided an example of a successful LBOH inspection that revealed the retailer evaded approximately \$90,000 in unpaid taxes.
 - *For State Police AGO, CIB and other DA offices:* A successful investigation revealed a smuggling evasion of over \$4.1 million in excise taxes. The case was prosecuted by the Attorney General's Office, with assistance from the State Police and CIB.
- Mr. Hayes summarized the report’s proposed recommendations to the Legislature and policymakers for improvements relative to Commonwealth’s tobacco laws and the Task force’s enforcement methods.
 - *M.G.L. c. 62C § 16 (Filing of Returns):* The legislature may wish to change the timing of payment of excise tax for unlicensed wholesalers/distributors (i.e., retailers purchasing from unlicensed distributors) of smokeless tobacco, cigars/smoking tobacco, and ENDS so that returns are filed upon purchase or importation of untaxed products. This may assist in correcting inconsistency between timing of filing returns for different tobacco license types.
 - *M.G.L. c. 62C § 68 (Suspension/Revocation of Licenses):* The legislature may wish to consider adding language that a conviction for violation of chapter 64C or federal tobacco trafficking statutes could serve as basis for suspension/revocation of license. The legislature may wish to consider adding language that a licensee’s refusal to allow the Task Force access to conduct inspections is grounds for suspension/revocation of license. The legislature should also consider amending the appeals language so licensees are required to notify the Commissioner of the Department of Revenue of an appeal and file bond before an appeal hearing can

- take place - consistent with current DOR Administrative Policies and M.G.L. c. 58A § 9.
- *M.G.L. c. 62C § 73 (Tax Evasion)*: The legislature may wish to consider amending tax evasion criminal sentencing provisions to change "imprisonment for not more than five years" to "imprisonment in the house of corrections for not more than 2 ½ years or state prison for not more than 5 years..." to avoid jurisdiction issues. The Task Force noted this jail/prison distinction is common in all other criminal statutes but is not included in tobacco-related criminal statutes. The legislature may also wish to consider authorizing DOR/CIB to file criminal complaints for violation of 62C Section 73 pursuant to Chapter 218 Section 35A.
 - *M.G.L. c. 64C § 1 (Definitions)*: The legislature may wish to consider modifying definitions to update language. For example, the current definition of "tobacco products" does not include cigars.
 - *M.G.L. c. 64C § 5 (Record Keeping)*: The legislature may wish to consider modifying language to require cigarette licensees to maintain records on-site for cigarette and smokeless tobacco. The legislature may also wish to consider adding a civil penalty for hindering, obstructing, or preventing authorized Task Force inspections.
 - *M.G.L. c. 64C § 7B (Cigars)*: The legislature may wish to add on-demand inspection authority for cigar and smoking tobacco products. Currently, the Task Force can only request to inspect records on demand. The legislature may also wish to consider adding records as an item to be seized in addition to untaxed cigars/smoking tobacco.
 - *M.G.L. c. 64C § 7E (ENDS)*: The legislature may wish to consider adding on-demand inspection authority for ENDS products. Currently, the Task Force can only request to inspect records on demand. The legislature may also wish to consider adding records as an item to be seized in addition to untaxed ENDS products.
 - *M.G.L. c. 64C § 8 (Prosecution for Illegal Possession)*: The legislature may wish to consider modernizing the language (apply to all tobacco products) and remove outdated sections. The legislature may also wish to consider adding a reference to the new Section 10 language.
 - *M.G.L. c. 64C § 10 (Tobacco Trafficking & Penalties)*: The legislature may wish to consider creating a new criminal provision for Dealing in Tobacco Products without a License. The criminal statute should include a felony and misdemeanor based upon the amounts of untaxed tobacco products sold or possessed with intent to sell. The legislature may wish to consider requiring that payments by licensees to purchase tobacco products be in the form of a check, EFT, or credit/debit card and prohibit cash payment. This will assist in creating transparency and allow for more efficient and effective civil and criminal enforcement of tobacco laws. The legislature may wish to consider adding a civil penalty for the violation of new criminal provision Dealing in Tobacco Products without a License. The legislature may wish to consider authorizing DOR/CIB to file criminal complaints for violation of *M.G.L. c. 64C § 10* pursuant to Chapter 218 Section 35A.

- *M.G.L. c. 64C § 11 (Records/Reporting)*: The legislature may wish to consider clarify the Task Force’s authority to examine cigarettes and smokeless tobacco products in addition to records.
- *M.G.L. c. 64C § 34 (Possession Unstamped Cigarettes)*: The legislature may wish to consider adding the house of correction and prison sentence (reference M.G.L. c. 62C § 73 above).
- *M.G.L. c. 64C § 35 (Possession/Transportation of Unstamped Cigarettes)*: The legislature may wish to consider adding the house of correction and prison sentence (reference M.G.L. c. 62C § 73 above).
- *M.G.L. c. 64C § 38 (Seizure/Forfeiture of Unstamped Cigarettes & Smokeless Tobacco)*: The legislature may wish to consider adding records as an item to be seized in addition to untaxed cigarettes & smokeless tobacco.

Member Agency Updates & Other Business

- Dan O’Neil discussed other potential legislative recommendations and reporting requirements. The Task Force agreed to revisit these recommended changes at the next meeting.
- Mr. Hayes provided two updates on DOR ENDS disposal procedures to the Task Force.
 - (1) ENDS Disposal Contract awarded in late December. DOR now has the capability to dispose of seized ENDS products in compliance with federal and state environmental regulations.
 - (2) DOR working towards the leasing of two (2) storage facilities for tobacco storage, one in western and one in the east to allow for the secure storage of seized tobacco by DOR MEB and CIB. DOR may approach the board in the near future to discuss funding options similar to Mass State Police storage facility. Depending on funding, it is anticipated that the DOR eastern facility will be operational in early summer and the western facility in late summer.
- Mr. Hayes inquired whether any board members had agency updates. Member agencies did not have any updates to report.

Closing Remarks

- Mr. Hayes asked for approval from the board to circulate the minutes the day after this meeting so the board members could make any changes and publish the minutes to the website so the public could review the summary for the pending annual report. All the board members agreed that the task force should publish the minutes.
- Mr. Hayes asked whether there was a motion to end the meeting. Dan O’Neil approved the motion. Patricia Henley seconded. Mr. Hayes thanked everyone for attending and concluded the meeting at 1:52 PM.

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact DOR Human Capital Development at 617-626-2355.